

DeVlieg-Sundstrand and International Union UAW and its Local 2051

DeVlieg, Inc. and International Union UAW and its Local 2051. Cases 33-CA-9294 and 33-CA-9525

March 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon charges filed by the International Union UAW and its Local 2051, on December 17, 1990, and August 13, 1991, the General Counsel of the National Relations Board issued a consolidated complaint on November 13, 1991, against DeVlieg-Sundstrand also referred to as DeVlieg, Inc. (Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and the consolidated complaint the Respondent has failed to file an answer.

On December 23, 1991, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On December 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. DeVlieg, Inc., Debtor-in-Possession, filed a response to the Notice to Show Cause and the General Counsel filed a motion in opposition to the response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the consolidated complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated December 10, 1991, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

The response to the Notice to Show Cause alleges that the books and records of DeVlieg, as debtor-in-possession, have been open to all parties in interest, including the Union, since the date of the filing on August 5, 1991, and that the Union has examined the

books.¹ The response further alleges, on information and belief, that as part of an agreement with the Board or with the Union, brokered by the Board, the Respondent notified the employees that it would bargain in good faith regarding all matters. Further, the response notes that as part of a stipulated order between the Respondent and the Union certain specified grievances would remain open. The response states that the active work force is reduced to approximately six employees and that the Respondent's operations will cease prior to January 31, 1992, at which time the termination agreement between the parties will conclude all the existing liabilities between the parties.

The response to the Notice to Show Cause fails to explain the Respondent's failure to answer the complaint. Moreover, it does not adequately respond to the allegations in the complaint. Thus, the response does not mention the Respondent's unilateral cessation of health and dental insurance benefits. Although the response attempts to respond to the Respondent's failure to provide the Union with requested information, the response fails to state why the information was not provided at the time of the original request. Although the response states that the Respondent's books are now open to the Union, the Respondent is still failing to specifically provide the Union with the information in the original request. Further, even if the Union has subsequently acquired the information, the failure to supply the information in a timely manner is unlawful.² The response asserts that the Board brokered an agreement between the parties; however, there is no evidence of that agreement or of Board participation in any such agreement. In view of the above, the Respondent has not shown good cause for failing to file a timely answer. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

1. At all times material, the Respondent, a Michigan corporation with an office and place of business located at Belvidere, Illinois, has engaged in the business of manufacturing machine tools and providing associated products and services.

2. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations described in paragraph 1, sold and shipped from its Belvidere, Illi-

¹The letters attached to the Respondent's response indicate that the Respondent, by letter dated July 25, 1991, declined the Union's request for information. Subsequent to the bankruptcy filing, the Respondent's president, by letter dated October 10, 1991, advised the Union that the Respondent was prepared to comply with the information request.

²*D. J. Electrical Contracting*, 303 NLRB 820 fn. 1 (1991).

nois facility finished products valued in excess of \$50,000 directly to points outside the State of Illinois and purchased and caused to be transferred and delivered to its Belvidere, Illinois facility goods and materials valued in excess of \$50,000, which were transported to the facility directly from States other than the State of Illinois.

3. The Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. The Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All hourly paid and production and maintenance employees at De-Vlieg-Sundstrand's plant and Divisions located at Belvidere, Illinois, excluding office and shop clerical employees, chief inspectors, assistant chief inspectors, chief of quality control, first aid attendants and nurses, personnel department employees, engineering department employees, experimental engineers, time study employees, watchmen and guards, salaried employees, messengers, outside servicemen, superintendents, assistant superintendents, foremen, assistant foremen, and all other supervisory employees.

Since an unknown but certain date prior to January 1, 1989, and at all times material, the Respondent has recognized the Union as the exclusive bargaining representative of the unit of employees described above. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 30, 1990, through April 29, 1993.

At all times since an unknown but certain date prior to January 1, 1989, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive bargaining representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about July 1, 1990, Respondent has ceased to maintain and continue health and dental insurance benefits as required by the collective-bargaining agreement between the Respondent and the Union.

The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct.

Since on or about July 22, 1991, the Union, by letter, has requested the Respondent to furnish the Union with the following information:

1. Audited financial statements for 1989 and 1990.
2. Monthly and year-to-date financial statements for more recent periods.
3. Data on backlog and future orders.
4. Information on financial transactions and arrangements with DeVlieg-Bullard, Stanwich Partners and any other related business.
5. Any other information which would help him [the Union's actuary] answer the following questions:

(A) Who owns DeVlieg and what is the financial relationship between the parent company or owners of DeVlieg.

(B) What happened to the proceeds from the sale of DeVlieg-Bullard?

(C) What is DeVlieg's operating plan for improving its financial health and covering its obligations?

The information requested by the Union is necessary for, and relevant to, the Union's performance of its function as the collective-bargaining representative of the unit employees.

Since on or about July 25, 1991, the Respondent, by Ron Cantrell, has failed and refused to furnish the Union the information requested.

CONCLUSION OF LAW

By ceasing to maintain and continue health and insurance benefits as required by the collective-bargaining agreement, and by engaging in such conduct without affording the Union the opportunity to negotiate and bargain as the exclusive bargaining representative of the unit employees, and by refusing to provide the Union with certain requested information, the Respondent did engage and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to reinstate the health and dental insurance coverage for its unit employees, and to make the employees whole for any losses they may have suffered because of its discontinuance, plus interest. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), the amounts must be computed in the man-

ner set forth in *Ogle Protection Service*, 283 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded*, 183 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, DeVlieg-Sundstrand, Belvidere, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Union UAW and its Local 2051, by unilaterally discontinuing providing health and dental insurance coverage for its unit employees as required by the collective-bargaining agreement. The unit is:

All hourly paid and production and maintenance employees at De-Vlieg-Sundstrand's plant and Divisions located at Belvidere, Illinois, excluding office and shop clerical employees, chief inspectors, assistant chief inspectors, chief of quality control, first aid attendants and nurses, personnel department employees, engineering department employees, experimental engineers, time study employees, watchmen and guards, salaried employees, messengers, outside servicemen, superintendents, assistant superintendents, foremen, assistant foremen, and all other supervisory employees.

(b) Failing and refusing to furnish the Union with certain information necessary and relevant for the Union's performance as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, reinstate the employees health and dental insurance coverage and make unit employees whole for any losses they may have suffered because of its discontinuance, in the manner set forth in the remedy section of this decision.

(b) On request, bargain collectively with the Union by furnishing the Union with the following relevant and necessary information:

1. Audited financial statements for 1989 and 1990.
2. Monthly and year-to-date financial statements for more recent periods.
3. Data on backlog and future orders.
4. Information on financial transactions and arrangements with DeVlieg-Bullard, Stanwich Partners and any other related business.
5. Any other information which would help him [the Union's actuary] answer the following questions:

(A) Who owns DeVlieg and what is the financial relationship between the parent company or owners of DeVlieg.

(B) What happened to the proceeds from the sale of DeVlieg-Bullard?

(C) What is DeVlieg's operating plan for improving its financial health and covering its obligations?

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payment due under the terms of this Order.

(d) Post at its facility in Belvidere, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's Authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Union UAW and its Local 2051, by unilaterally discontinuing providing unit employees with health and dental insurance coverage as required by the collective-bargaining agreement. The unit is:

All hourly paid and production and maintenance employees at De-Vlieg-Sundstrand's plant and Divisions located at Belvidere, Illinois, excluding office and shop clerical employees, chief inspectors, assistant chief inspectors, chief of quality control, first aid attendants and nurses, personnel department

ment employees, engineering department employees, experimental engineers, time study employees, watchmen and guards, salaried employees, messengers, outside servicemen, superintendents, assistant superintendents, foremen, assistant foremen, and all other supervisory employees.

WE WILL NOT refuse to furnish the Union with certain information necessary and relevant for the Union's performance as your exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, reinstate your health and dental insurance coverage and make you whole for any losses you may have suffered because of our discontinuance, with interest.

WE WILL, on request, bargain collectively with the Union by furnishing the following relevant and necessary information:

1. Audited financial statements for 1989 and 1990.

2. Monthly and year-to-date financial statements for more recent periods.

3. Data on backlog and future orders.

4. Information on financial transactions and arrangements with DeVlieg-Bullard, Stanwich Partners and any other related business.

5. Any other information which would help him [the Union's actuary] answer the following questions:

- A) Who owns DeVlieg and what is the financial relationship between the parent company or owners of DeVlieg.

- B) What happened to the proceeds from the sale of DeVlieg-Bullard?

- C) What is DeVlieg's operating plan for improving its financial health and covering its obligations?

DEVLIEG-SUNDSTRAND